



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
FRANKE C. FITCH }

Appearances:

For Appellant: J. B. Scholefield and J. W. Hartung,
Certified Public Accountants of McLaren,
Goode & Co.
For Respondent: Frank M. Keesling, Franchise Tax Counsel,
Cl de Bondeson, Senior Franchise Tax
Auditor

O P I N I O N

This appeal is made pursuant to Section 19 of the Personal Income Tax Act of 1935 (Chap. 329, Stats. of 1935, as amended) from the action of the Franchise Tax Commissioner in overruling the protests of Franke C. Fitch to proposed assessments of additional taxes in the amounts of \$49.16 and \$100.00 for the taxable years ended December 31, 1935, and December 31, 1936, respectively,

The Appellant is a resident of California who received during the taxable years in question dividends on stock which he owned in Canadian corporations. Section 932 of the Income War Tax Act of the Dominion of Canada imposes, in addition to other taxes imposed by the Act an "income tax of five per centum . . . on all persons who are non residents of Canada in respect of (a) all dividends received from Canadian debtors . . ." The sole question presented by this appeal is whether, under Section 25 of the Personal Income Tax Act, the Appellant is entitled to a credit against the taxes imposed by the latter Act on account of the above tax imposed by the Dominion of Canada. Section 25a of the Personal Income Tax Act of 1935 allows a credit in favor of resident taxpayers on account of income taxes paid to other states or countries, upon "net income . . . derived from sources without this State." One of the contentions of the Commissioner is that the dividends received by Appellant from Canadian corporations were not "derived from sources without the State", within the meaning of this provision, and that therefore the Appellant is not entitled to any credit. In view of the recent decision of the Supreme Court of this State in Millerv. McColgan, 17 A. C. 466, we believe that this contention is correct,

That case involved the application of the above provision of the Personal Income Tax Act with respect to dividends received by a resident of California upon shares of stock in a corporation organized and carrying on business in the Philippines. It was held that the source of the dividends was the

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stock itself as distinguished from the income of the corporation and that by reason of judicial decisions according to intangible personal property a taxable situs in the state wherein the owner resides, the dividends in question were not to be regarded as having been "derived from sources without the State." The owner of the stock was, accordingly, denied the right to credit against the California tax any portion of the tax paid on account of such dividends under the net income tax of the Philippines.

These considerations are equally applicable to the situation of the Appellant, and therefore preclude the allowance of any credit on account of the tax imposed by the Dominion of Canada.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the action of Chas. J. McColgan, Franchise Tax Commissioner, in overruling the protests of Franke C. Fitch to proposed assessments of additional taxes in the amounts of \$49.16 for the taxable year ended December 31, 1935, and \$100.00 for the taxable year ended December 31, 1936, be and the same is hereby sustained.

Done at Sacramento, California, this 7th day of July, 1942, by the State Board of Equalization.

R. E. Collins, Chairman
Wm. G. Bonelli, Member
George R. Reilly, Member
Harry B. Riley, Member

ATTEST: Dixwell L. Pierce, Secretary